



COMMONWEALTH OF KENTUCKY  
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**OAG 16-010**

November 10, 2016

*Subject:* Whether a county may enact a local motor fuels tax

*Requested by:* E.G. Thompson  
Hardin County Magistrate

*Written by:* Matt James

*Syllabus:* A county may not enact a local motor fuels tax

*Statutes construed:* KY. CONST. § 181

***Opinion of the Attorney General***

Hardin County Magistrate E.G. Thompson has requested an opinion of this office on whether a county may enact a local motor fuels tax. We advise that a county may not enact a local motor fuels tax.

KY. CONST. § 181 provides that "the General Assembly may, by general laws only, provide for . . . a special or excise tax; and may, by general laws, delegate the power to counties, towns, cities and other municipal corporations, to impose and collect license fees on stock used for breeding purposes, on franchises, trades, occupations and professions." KY. CONST. § 181 specifies that the legislature may provide for excise taxes by general laws only, and authorizes the legislature to delegate only the power to assess license and ad valorem taxes to local governments. "Ad valorem taxes and license taxes are the only kinds of taxes that a county may levy." *Driver v. Sawyer*, 392 S.W.2d 52, 53 (Ky. 1965). KY. CONST. § 181 does not authorize the legislature to delegate the power to assess excise taxes to local governments. "The General Assembly cannot delegate to a subordinate unit of government the power to levy an excise tax . . . ." *C. C. C. Coal Co., Inc. v. Pike Cnty.*, 536 S.W.2d 467, 468 (Ky. 1976).

BLACK'S LAW DICTIONARY (10th ed. 2014) defines "excise" as "a tax imposed on the manufacture, sale, or use of goods (such as a cigarette tax), or on an occupation or activity (such as a license tax or an attorney occupation fee)." "Excise includes every form of charge imposed by public authority for the purpose of raising revenue upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation." *City of Lexington v. Motel Developers, Inc.*, 465 S.W.2d 253, 255 (Ky. 1971). A gasoline or motor fuels tax "is not a license or privilege tax. It is levied on the commodity itself and is an excise tax on distribution, consumption, or use and not on the act of selling." *Commonwealth, by Nelson v. Dixie Greyhound Lines*, 72 S.W.2d 1032, 1033 (Ky. 1934). A gasoline or motor fuels tax is an excise tax. KY. CONST. § 181 does not authorize local governments to enact excise taxes, and prescribes that the legislature may enact excise taxes "by general laws only." Accordingly, local governments have no authority to enact a motor fuels or gasoline tax.

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